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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

MAY 6 1993  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of

Amendment of Section 76.51(a) of  
the Commission's Rules to Add  
Pine Bluff as a Designated  
Community in the Little Rock,  
Arkansas, Television Market

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MM Docket No.

To: Chief, Mass Media Bureau

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**PETITION FOR EXPEDITED RULEMAKING**

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AGAPE CHURCH, INC.

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May 6, 1993

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# PETITION FOR EXPEDITED RULEMAKING

Agape Church, Inc. ("Petitioner"), licensee of television broadcast station KVTN, Channel 25, Pine Bluff, Arkansas, pursuant to Section 1.401 of the Commission's Rules, hereby petitions for amendment of Section 76.51(a) of the Commission's Rules to redesignate television market number 50, presently designated as "Little Rock, Arkansas", as "Little Rock - Pine Bluff, Arkansas." Petitioner further requests the Commission to consider this petition under the expedited procedures adopted in its recent Report and Order in MM Docket No. 92-259.<sup>1/</sup>

1/ Implementation of the Cable Television Consumer Protection and Competition Act of 1992, FCC 93-144, 8 FCC Rcd. \_\_\_\_\_ (released March 29, 1993) ("Must-Carry Order"). At paragraph 50, the Must-Carry Order provides for issuance of a notice of proposed rulemaking without first seeking public comment on requests such as Petitioner's. Further, Section 76.51, as amended by the Must-Carry Order, includes a Note providing, in part, that petitions for rulemaking "shall not be subject to the public notice provisions of Section 1.403 of this chapter."

## **I. INTRODUCTION AND BACKGROUND**

Station KVTN is licensed to Pine Bluff, Arkansas, a community located approximately 30 airline miles southeast of Little Rock. The Pine Bluff Metropolitan Statistical Area (MSA), as designated by the U.S. Bureau of The Census, is directly adjacent to the Little Rock - North Little Rock MSA. Pine Bluff is included by Arbitron in the Little Rock Survey Area, Little Rock Area of Dominant Influence (ADI), and Little Rock Metro Rating Area. Station KVTN places a Grade B signal over Little Rock, and the coverage areas of Station KVTN and Station KASN, the other television station licensed to Pine Bluff, substantially overlap the coverage areas of the five television stations which are licensed to Little Rock.<sup>2/</sup>

Although Station KVTN is entitled to carriage on Little Rock-area cable systems under the rules adopted in the Must-Carry Order, such carriage would engender copyright license liability for the cable operators. This is because Section 111 of the Copyright Act, 17 U.S.C. § 111(f), continues to define "local" and "distant" television station signals pursuant to the Commission's old must-carry rules which preceded those adopted in the Must-Carry Order. For purposes relevant to Petitioner's request, the prior must-carry rules include classification of a signal as "local" where the television station's city of license

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<sup>2/</sup> The five television stations licensed to Little Rock are: KETS, Channel 2; KARK, Channel 4; KATV, Channel 7; KTHV, Channel 11; and KLRT, Channel 16.

has "designated community" status in the Commission's Top 100 Market List under Section 76.51 of the Rules. Accordingly, redesignation of the Little Rock market as "Little Rock -- Pine Bluff" under Section 76.51 as proposed in this Petition, will permit Little Rock-area cable systems to carry KVTN on an equal basis with other television stations in the market without incurring "distant signal" copyright liability.

**II. PETITIONER'S PROPOSAL MEETS THE "COMMONALITY" REQUIREMENT ESTABLISHED UNDER THE MUST-CARRY ORDER**

The Commission recognized in its Must-Carry Order that its Section 76.51 Top 100 Market List was out of date, having been derived largely from Arbitron's 1970 prime time household rankings. Indeed, the Commission acknowledged that Section 614(f) of the Cable Act of 1992 requires the Commission to make revisions needed to update the list and the designated market communities included in the list.<sup>3/</sup> The Commission further recognized that since Congress had specifically directed the Commission to use current ADI markets for determining must-carry rights, the required updating of Section 76.51 list would primarily affect copyright liability.<sup>4/</sup> The Commission decided, however, that the record was insufficient in the Must-Carry Proceeding (MM Docket No. 92-259) to make wholesale revisions to Section 76.51, concluding that it would only update

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<sup>3/</sup> Must-Carry Order, para. 48.

<sup>4/</sup> Id.

the existing list by adding those designated communities requested by parties providing specific evidence that change to a particular market is warranted.<sup>5/</sup> The Commission stated that it would expect such parties to provide evidence that "demonstrates commonality between the proposed community to be added to a market designation and the market as a whole."<sup>6/</sup>

There is strong evidence of commonality between Pine Bluff and the Little Rock market as a whole. As already noted, the Pine Bluff MSA is directly adjacent to the Little Rock -- North Little Rock MSA. A measure of commonality more pertinent to Petitioner's request is Arbitron's treatment of the Little Rock market. Thus, Arbitron includes Pine Bluff not only within the larger Survey Area, but also within the Little Rock ADI and Metro Area as well.<sup>7/</sup> The ADI, a standard market definition consisting of all counties in which the home market stations receive a preponderance of viewing, reflects Arbitron's view that Pine Bluff and Station KVTN are part of the Little Rock marketplace. The ADI establishes that, for economic purposes,

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<sup>5/</sup> The Commission made only three modifications to the Section 76.51 list in its Must-Carry Order pursuant to such individual requests: renaming the Columbus, Ohio market to include Chillicothe; adding New London to the Hartford-New Haven-New Britain-Waterbury, Connecticut, market; and changing the Atlanta, Georgia, market to Atlanta-Rome. Must-Carry Order, para. 50.

<sup>6/</sup> Id.

<sup>7/</sup> Broadcasting & Cable Yearbook, Arbitron ADI Market Atlas, p. C-173.

KVTN participates in a common television market with the stations licensed to Little Rock.

### **III. PETITIONER'S PROPOSAL MEETS THE TRADITIONAL TEST FOR A HYPHENATED TELEVISION MARKET**

The Commission has defined a hyphenated television market as one characterized by more than one major population center supporting all stations in the market, including competing stations licensed to different cities within that market area.<sup>8/</sup> The Little Rock market consists of two major population centers, Little Rock and Pine Bluff. Exhibit A hereto, a map depicting the Grade B contours of the two Pine Bluff and the five Little Rock television stations, shows clearly that both population centers support all seven stations -- to wit, all seven Grade B contours encompass both communities.<sup>9/</sup>

The Commission also has stated that the "hyphenation" of a market is based on the premise that stations licensed to any of the named communities in the hyphenated market do, in fact, compete with all stations licensed to such communities.<sup>10/</sup> This definition is met as well. The two Pine Bluff stations, KVTN and KASN, and the stations licensed to the presently

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<sup>8/</sup> Cable Television Report and Order, 36 FCC 2d 143, 176 (1972).

<sup>9/</sup> The coverage of the Little Rock area by the Pine Bluff stations is in part a consequence of their transmitter locations approximately half way between Little Rock and Pine Bluff. In close proximity is the transmitter site of Little Rock Station KATV, Channel 7.

<sup>10/</sup> CATV-Non Network Agreements, 46 FCC 2d 892, 898 (1974).

designated Section 76.51 community of Little Rock, have coverage areas that substantially overlap; and, all of these stations do, in fact, compete for audiences throughout the market area. KVTN relies on the entire area encompassed by its Grade B contour for economic support. There can be little doubt that KVTN is unavoidably competing with the other stations in the Little Rock -- Pine Bluff market.

The Commission traditionally has looked to four factors in evaluating individual market conditions consistent with the underlying competitive purpose of the market hyphenation rule: (1) the distance between the proposed community and the existing designated community; (2) whether cable carriage, if afforded to the subject station, would extend to areas beyond its Grade B signal coverage area; (3) the presence of a clear showing of a particularized need by the station requesting the change of market designation; and (4) an indication of benefit to the public from the change.<sup>11/</sup>

All four factors are supportive of the proposed redesignation of the Little Rock market. First, Pine Bluff is proximate to Little Rock. As noted earlier, the cities are approximately 30 airline miles distant. The Arkansas State Highway and Transportation Department 1987 Highway Map of Arkansas' Mileage Chart, depicting driving distances between intersections nearest the center of cities, measures the distance

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<sup>11/</sup> See, e.g., Major Television Markets (Fresno-Visalia, Calif., 57 RR 2d 1122 (1985)).

from Little Rock to Pine Bluff at 42 miles. By contrast, the redesignation of the Atlanta market as Atlanta-Rome, as approved in the Must-Carry Order, involved communities that are some 56 miles apart.<sup>12/</sup>

The second factor, whether cable carriage, if afforded to the subject station, would extend to areas beyond its Grade B signal coverage area, would no longer seem to have relevance given that the new must carry rules adopted by the Commission in the Must-Carry Order are keyed to the ADI rather than the Grade B contour looked to under the old must-carry rules. Nonetheless, the proposed modification of Section 76.51 substantially complies with this criterion as well since the principal Little Rock-area cable systems which would be affected by the rule change are within Station KVTN's Grade B contour. These include cable systems serving North Little Rock, Jacksonville, Benton, Bryant and Maumelle. The only significant exception, a cable system in Conway, falls just slightly beyond Station KVTN's Grade B contour.

With respect to the third factor, a particularized need for the proposed rule change exists. Station KVTN already has been notified by several Little Rock-area cable systems that they will not carry the station because of copyright liability. The need

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<sup>12/</sup> It should be noted that the distance between Rome and Atlanta was not ameliorated by co-location of transmitters, a factor sometimes considered by the Commission in addressing the proximity factor. See, Request of TV 14, Inc. to Amend Section 76.51 of the Commission's Rules, 7 FCC Rcd 8591, 8592 (1992).



for the proposed amendment to Section 76.51 is thus not theoretical, but real and immediate. Finally, the public will benefit from the proposed redesignation because it will bring to the cable systems in the Little Rock-area diversified programming from an independent UHF television station.

### III. CONCLUSION


Petitioner's proposed redesignation of the Little Rock market is consistent with the rationale of the Must-Carry Order, meets the "commonality" standard described therein, and would address the anomalous circumstances created by the treatment of Station KVTN as a "local signal" under the new must-carry rules and as a "distant signal" for copyright liability purposes with respect to Little Rock-area cable systems. In addition, the requested redesignation meets the standards traditionally applied by the Commission in creating hyphenated markets under Section 76.51 of its Rules. Accordingly, it is requested that the Commission issue a notice of proposed rulemaking to amend Section 76.51 of the Rules to redesignate the Little Rock market as

"Little Rock - Pine Bluff", in accordance with the expedited  
rulemaking procedures established in the Must-Carry Order.

Respectfully submitted,

AGAPE CHURCH, INC.

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May 6, 1993

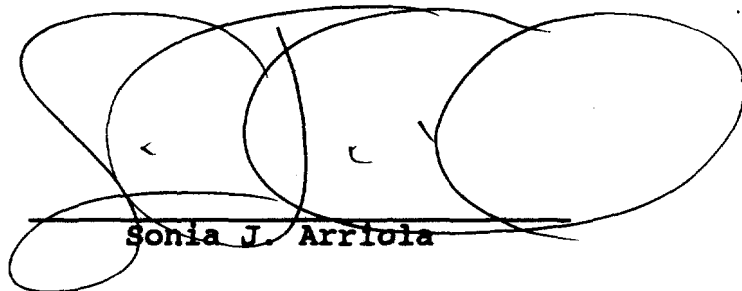
Its Attorneys

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**CERTIFICATE OF SERVICE**

I, Sonia J. Arriola, a secretary in the law firm of Gardner, Carton & Douglas, certify that I have this 6th day of May, 1993, caused to be sent by hand delivery, a copy of the foregoing PETITION FOR EXPEDITED RULEMAKING to the following:

Mr. Roy J. Stewart  
Chief, Mass Media Bureau  
Federal Communications Commission  
1919 M Street, N.W., Room 314  
Washington, D.C. 20554



Sonia J. Arriola